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December 22, 2008

BY HAND

Jeff S. Jordan

Supervisory Attorney

Complaints Examination & Legal Administration

Federal Election Commission

999 E Street, N.W.

Washington, D.C. 20463

Re: MUR 6110

Dear Mr. Jordan:

We are writing this letter on behalf of Obama for America (the "Committee") and Martin Nesbitt, as treasurer, (collectively referred to as the "Respondents") in response to the Complaint filed in the above-referenced matter by the District of Columbia Republican Committee (the "Complainant"). For the reasons set forth below, the facts do not support a reason to believe finding in this matter and the Complaint should be dismissed.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act. See 11 C.F.R. § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. See Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. See *id.*

Here, Complainant makes two separate allegations against Respondents, each of which is unsupported by the facts and should be dismissed.

First, the Complaint alleges that the Obama Victory Fund ("OVF") knowingly accepted a corporate contribution in connection with a September 26, 2008 fundraiser held at VIDA Fitness, a fitness center in Washington, D.C. [redacted] OVF is a joint fundraising committee authorized by Obama for America and the Democratic National Committee ("DNC").

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Perkins Coie LLP and Affiliates

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In this case, the DNC's Gay and Lesbian Leadership Council organized the fundraiser at VIDA Fitness to benefit OVF; no Obama for America employees were involved in organizing the event. The DNC sent invitations to the event via email to approximately 500 Lesbian, Gay, Bisexual and Transgendered donors in the metropolitan Washington, D.C. area. Per 11 C.F.R. § 102.17(c)(2), the DNC invitation included the required joint fundraising notice and disclaimer. A copy of the invitation is attached as Exhibit A.

Without the prior knowledge or consent of Obama for America, the DNC, or OVF, the owner of VIDA Fitness and Bang Salon Spa, David von Storch, emailed separate invitations to the event to individuals on the customer lists of VIDA Fitness and Bang Salon Spa. None of the committees involved (Obama for America, the DNC, or OVF) requested that Mr. von Storch send out invitations to his customer lists, nor did they ever authorize the emails. Furthermore, because the emails were sent without authorization, the committees had no knowledge that they did not include the proper joint fundraising notice.

Mr. von Storch never acted as an agent of Obama for America, OVF, or the DNC; he lacked the authority, either express or implied, to solicit, direct, or receive contributions, or to create or distribute communications, on behalf of the committees. See 11 C.F.R. §§ 300.2(b), 109.3(a). Because Mr. von Storch acted as an individual volunteer without the committees' authority, and not as an agent of the committees, Obama for America, OVF, and the DNC cannot be held liable for his actions.

Because OVF paid for the expenses associated with the VIDA Fitness event, and the emails to the VIDA Fitness and Bang Salon Spa customer lists were sent by Mr. von Storch without the knowledge or authority of Obama for America, OVF, or the DNC, the facts alleged in the Complaint do not support finding reason to believe that Respondents have acted in violation of federal campaign finance law.

Second, the Complaint alleges that OVF and Obama for America knowingly accepted a corporate contribution in connection with an event identified only as a "Concert for Change". See Compl. at 3. Obama for America never hosted a "Concert for Change" event, and had no knowledge of the event prior to receiving this Complaint. Attached is an affidavit to this effect from Michael Dykes, former Finance Chief of Staff for Obama for America. See Exhibit B. While the promotional materials distributed in connection with the event may have stated that the


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proceeds would benefit the Committee, the event was not an official or authorized Committee event. Furthermore, that the event was publicized on the social networking sections of the Committee's website does not transform an otherwise unauthorized event into an official Committee event.

Because the event was conducted entirely without the Committee's express or implied authorization, the organizers of the event were not acting as the Committee's agents. *See* 11 C.F.R. §§ 300.2(b); 109.3(a). Obama for America therefore did not knowingly accept a corporate contribution in violation of 2 U.S.C. § 441b(a) or 11 C.F.R. § 100.52(d)(1) and cannot otherwise be held liable for the actions of individual volunteers. Nor can the lack of a joint fundraising notice on the event's promotional materials be attributed to the Committee.

In sum, the Complaint does not allege any facts that would describe a violation of federal campaign finance law on the part of the Respondents. Pursuant to 11 C.F.R. § 111.4(d), Respondents respectfully request that the Commission immediately dismiss the Complaint and take no further action.

Very truly yours,



Robert F. Bauer
Rebecca Gordon
Counsel to Obama for America and Martin H. Nesbitt, Treasurer

**The Gay and Lesbian Leadership Council
of the
Democratic National Committee**

Cordially invites the LGBT Community and Allies to a reception with

**Sarah Jessica Parker
Benefiting the Obama Victory Fund**

Friday, September 26, 2008

**Vida Fitness
1515 15th Street, NW
Washington, DC**

6:00 PM – 8:00 PM

Host Committee: (Write/Raise)

VIP: \$1,000 (Write)

***Host Committee members are invited to a VIP reception at 6:00 PM at HALO,
located at 1435 P Street, NW**

Supporter: \$250

Friend: \$100

(Limited tickets at this level)

**To R.S.V.P. please complete the form below or visit:
<https://donate.barackobama.com/page/contribute/DLCSJP>**

**If you have any questions, or would like additional information, please contact
Thomas Petrillo @ [redacted] or at
RSVP by fax to 202-572-7917**

Contributions and gifts to Obama Victory Fund are not deductible for federal income tax purposes.

**Paid for by Obama Victory Fund, a joint fundraising committee authorized by Obama for America and
the Democratic National Committee.**

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The first \$2,300 of each contribution from an individual will be allocated to Obama for America and will be considered designated for the general election. The next \$28,500 of each contribution from an individual will be allocated to the Democratic National Committee. Any contributor may designate his or her contribution for a particular participant. (Participants are Obama for America and the DNC). The allocation formula above may change if any contributor makes a contribution that, when allocated, would exceed the amount that the contributor may lawfully give to either participant.

Please make checks payable to:
OBAMA VICTORY FUND

Thomas Pettillo
430 S. Capitol Street, SE
Washington, DC 20003
Fax: (202) 572-7917

Total Amount: \$ _____

Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and employer of individuals whose contributions exceed \$200 in an election cycle.

First & Last Name: _____

My Guests Name: _____

Address: _____

City/State/Zip: _____

If foreign address provide US passport number: _____

Employer: _____ Occupation: _____

Work Phone: _____ Work Fax: _____

Home Phone: _____ Email: _____

☐ I certify that I am a U.S. citizen or legal permanent resident of the U.S.

Signature: _____

Contribute by Credit Card

Please bill my personal credit card: ☐ Visa ☐ MasterCard ☐ AMEX ☐ Discover

Card Number: _____ Exp: _____

Name as it appears on the card: _____

Signature: _____

Second Name on Account, if Joint Account*: _____

*Contributions will be evenly attributed between names.

2nd Name Employer: _____ 2nd Name Occupation: _____

Second Signature for Joint Account: _____

Invited by: _____

OVF Staff Name: _____ Signature: _____

Obama Victory Fund does not accept contributions from currently registered federal lobbyists, registered foreign agents, political action committees, or minors under the age of 16. Federal law prohibits the acceptance of corporate contributions. Contributions and gifts to the Obama Victory Fund are not deductible for federal income tax purposes.

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